



THE CITY OF SAN DIEGO

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AUG 11 2008

COUNCILMEMBER
DONNA FRYE

MEMORANDUM

DATE: August 11, 2008

TO: Honorable Councilmember Donna Frye, District Six

FROM: Kelly Broughton, Director, Development Services Department

SUBJECT: Council District Six Memorandum, July 30, 2008, Draft Candidate Findings of Fact and Statement of Overriding Considerations regarding the Final Environmental Impact Report for University Towne Center Revitalization Project

On April 23, 2008, and prior to the first discretionary action on June 12, 2008 for the University Towne Center Project, the project applicant, Westfield Corporation, provided their draft Candidate Findings of Fact (Findings) and Statement of Overriding Considerations (SOC) to the City. Consistent with Municipal Code Section 128.0310(a), Westfield's draft Findings and SOC's were included as a separate attachment to the Planning Commission Report No. PC-08-057, a public document, and were considered by the Planning Commissioners on both May 22, 2008 and June 12, 2008. The Candidate Findings and Statements of Overriding Consideration were, therefore, available to the public and decision makers 14 days prior to the first discretionary action on the project by the Planning Commission.

Per CEQA Guidelines Section 15901, "No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding." The findings are made at the time a project is approved (in the City of San Diego, environmental document certification and project approval take place at the same hearing). Additionally, CEQA Guidelines Section 15093(b) states that "when the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record." A Statement of Overriding Considerations must be included in the record of project approval. Tentative Findings and SOC's are often presented to the decision-making body. These Findings and SOC's may be modified by Westfield and/or the decision makers then rewritten as needed based on the decision-making body's final decision regarding the project. The Findings and SOC's become part of the project's administrative record and are available to the public, but they do not have to be circulated for public review under the California Environmental Quality Act Guidelines.

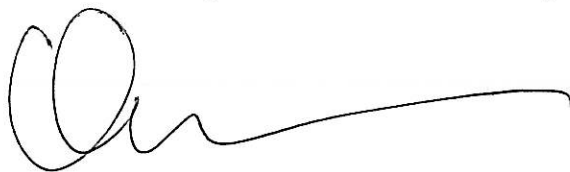
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However, and as detailed on the attached Timeline and Evolution for Westfield's draft Findings and SOC's, on May 13, 2008, Westfield provided the Chair of the University Community Planning Group (UCPG) with an electronic copy of their draft Findings and SOC's to be distributed to the community prior to the UCPG providing a formal recommendation on the project.

As noted in the timeline, Westfield has made numerous modifications to their draft document throughout the public hearing process and finally, with the City Council providing an additional finding to Westfield's Findings and SOC's to complete the administrative record for the project's approval.

Because of the City Attorney's revision of the environmental resolution to not include the Findings and SOC's as attached exhibits and instead to reference their availability at the City Clerks office, City staff discovered on the day of the public hearing that City Council did not have copies of Westfield's current draft Findings and SOC's within their docket materials. Copies were immediately provided to all Councilmembers prior to the project being considered by City Council. It should be noted that while the document cover is dated July 29, 2008, the document has been available from Development Services staff since July 10, 2008. The purpose of using the date of the hearing on the cover was because there could be no final Findings and SOC's until after City Council action.

As a result of questions on this project and two others in regards to the availability vs. distribution of draft Findings and SOC's, City staff will mail them on all future projects at least 14 calendar days prior to the first public hearing or discretionary action to all members of the public and decision makers that are required to receive the final environmental document. This should avoid any future confusion on this process.

A handwritten signature in black ink, appearing to be 'KB', followed by a long horizontal line extending to the right.

Kelly Broughton, Director
Development Services Department

KGB/tpd

Attachments: Timeline and Evolution for Westfield's draft Findings and SOC's

cc: Honorable City Councilmembers
Honorable Mayor Jerry Sanders
City Attorney Michael Aguirre
William Anderson, DCOO/Executive Director of City Planning and Development
Andrea Tevlin, Independent Budget Analyst

**Project No. 2214, University Towne Center
Timeline and Evolution for Westfield's draft Findings and SOC's**

Timeline

- 4/23/08** Westfield provides draft Candidate Findings of Fact and Statement of Overriding Considerations ("Findings") to Development Services Dept. (DSD) for review and comment.
- 5/05/08** Westfield resubmits draft Findings sent to DSD.
- 5/13/08** Westfield sends draft Findings to Linda Colley, Chair UCPG.
- 5/16/08** Planning Commission Report No. PC-08-057 with draft Findings available to public.
- 5/22/08** First public hearing; Vice-Chair Planning Commissioner Naslund reads from draft Findings and requests revisions. Planning Commission continues project to 6/12/08.
- 6/06/08** Westfield delivers revised draft Findings to Planning Commission secretary for distribution to Planning Commissioners for 6/12/08 hearing docket.
- 6/09/08** CPCI/Facilities Finance requests modifications to draft Findings to clarify who was paying for the transit center.
- 6/11/08** DSD receives Westfield's transit clarification to draft Findings.
- 6/12/08** 2nd Planning Commission hearing; Westfield delivers revised draft Findings to Planning Commissioners; Multiple Commissioners review and discuss draft Findings and Overriding Considerations in detail; Planning Commission recommends approval of project, including draft Findings and Overriding Considerations, and certification of the EIR.
- 6/25/08** DSD sends electronic copies of draft permit, ordinance, and resolutions (including CEQA resolution w/ separate draft Findings exhibit) to the City Attorneys Office for Council hearing.
- 6/30/08** Westfield provides DSD with electronic copy of CEQA resolution w/ draft Findings exhibit included as a single document.
- 7/1/08** DSD forwards electronic copy of CEQA resolution w/ draft Findings exhibit to City Attorney Office.
- 7/09/08** Westfield provides the DSD with the revised draft Findings with edits from Planning Commission and clean-up language.

- 7/10/08** DSD forwards electronic copy of CEQA resolution w/ draft Findings exhibit to City Attorney Office.
- 7/14/08** City Attorney completes City Council drafts of the permit, ordinance and resolutions.
- 7/15/08** City Clerk Office docket close date for July 29, 2008, City Council hearing; DSD discovers City Attorney draft CEQA resolution does not include draft Findings exhibit, rather it notes within the CEQA resolution that the Findings, on file at the City Clerks Office are incorporated herein the resolution by reference.
- 7/23/08** City Council docket packages are delivered to Councilmembers.
- 7/25/08** Westfield team meets with Councilmember Donna Frye for pre-Council briefing.
- 7/29/08** City Council hearing; DSD staff provides copies to Council Docket Coordinator of current draft Findings prior to Council's noon recess and before UTC project item discussed at 2 pm; City Council approves UTC project on a 7-1 vote, with Districts 1,2,3,4,5,7,8 voting yea, and District 6 voting nay.